

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
_____)	

COMMENTS OF SBC COMMUNICATIONS INC.¹

I. INTRODUCTION AND SUMMARY.

In the 1996 Act, Congress required the Commission and states to work together to establish a comprehensive framework of federal and state universal service support mechanisms that are specific, predictable, and sufficient to preserve and advance universal service in a competitive environment, and which ensure that all consumers continue to have access to telecommunications at rates that are affordable and comparable to rates in urban areas. Nevertheless, almost 9 years later, federal and state regulators have yet to develop such a framework. Instead, they have continued to rely on a hodgepodge of federal and state universal service mechanisms, as well as a patchwork of implicit subsidies that continues to be the principal source of universal service support, that will not preserve and advance universal service in a competitive environment. That will not do.

As the Tenth Circuit has made clear, the 1996 Act requires the Commission to develop a complete plan for supporting universal service that ensures that federal universal service support mechanisms function in a coordinated way with each other (and any state support mechanisms)

¹ SBC Communications Inc. files these comments on behalf of itself and its operating company affiliates, including: Southwestern Bell Telephone, L.P.; Nevada Bell Telephone Company; Pacific Bell Telephone Company; Illinois Bell Telephone Company; Indiana Bell Telephone Company, Incorporated; Michigan Bell Telephone Company; The Ohio Bell Telephone Company; Wisconsin Bell, Inc.; and The Southern New England Telephone Company; and The Woodbury Telephone Company.

to achieve the goals of the Act.² As a consequence, the Joint Board and the Commission cannot continue their siloed approach to universal service reform, tinkering here with the non-rural support mechanism and there with the rural support fund. That kind of reform will do nothing to address the significant and fundamental problems with the existing mechanisms. Only a comprehensive plan that harmonizes the Commission's universal service support mechanisms, reforms those mechanisms to make them consistent with the requirements of the Act, and induces states to implement mechanisms that likewise are consistent with the requirements of the Act, will achieve the type of reform necessary to preserve and advance universal service in a competitive environment as required by the Act.

The Commission and Joint Board should take the first step toward developing a comprehensive framework for universal service support by recognizing that the existing federal high cost support mechanisms draw an arbitrary distinction between purportedly "rural" and "non-rural" carriers based on the size of the carrier, and ignore the fact that so-called "non-rural" carriers in fact serve far more customers in rural and other high-cost areas than "rural" carriers.³ And by severely constraining the support provided to so-called "non-rural" carriers, these mechanisms provide little if any support to the carriers, like SBC, that actually serve most rural and high cost customers.⁴ Such an approach cannot be reconciled with the statute. Consequently, the Joint Board and the Commission should abandon the improper distinction between "rural" and "non-rural" carriers and develop a mechanism that ensures that all carriers

² *Qwest Corp. v. FCC*, 258 F.3d 1191, 1201 (10th Cir. 2001).

³ VT PSB Comments to RTF at fn. 1 (noting that "rural" carriers serve only 20 percent of the population living in rural areas, while "non-rural" carriers serve the other 80 percent of rural customers) (filed Nov. 3, 2000).

⁴ Indeed, although SBC serves millions of end users in rural and high cost areas, it receives virtually no federal high cost support (SBC receives a small amount of support from the Interstate Access Support fund due to CALLS, and has one subsidiary, Woodbury Telephone Company, that qualifies as a rural carrier and receives a small amount of rural high cost support).

serving rural and high-cost areas receive federal (and state) universal support on an equitable and non-discriminatory basis.

The Joint Board and Commission should take other steps as well to ensure that federal support mechanisms are competitively neutral, and provide support for essential services that neither advantages nor disadvantages particular service providers or technologies. In particular, either in this proceeding or in the Commission's ETC Designation/USF Portability proceeding, the Joint Board and Commission must ensure that its portability rules do not result in excessive support payments and distort competition. To that end, the Joint Board and the Commission should limit the universal service support available to Competitive Eligible Telecommunications Carriers (CETCs) to the lesser of their own costs or the costs of the incumbent carrier. In addition, in calculating a CETC's costs for purposes of comparing them to those of the incumbent LEC, the Commission should rely on the existing high cost model or require the CETC to submit detailed cost studies to justify its costs (to the extent the CETC claims its costs are higher than those resulting from the model).

II. THE JOINT BOARD AND COMMISSION SHOULD EXTEND "RURAL" HIGH COST SUPPORT TO ALL CARRIERS SERVING RURAL AND HIGH COST AREAS.

Chairman Rowe of the Joint Board has aptly observed that the oxymoronic notion that so-called "non-rural" carriers serve rural areas, which is embodied in the Commission's schizophrenic high cost support mechanisms, is a consistent source of confusion and misimpression.⁵ But this definitional anomaly is more than just a source of confusion or mere semantic peculiarity. By narrowly defining and applying the term "rural" to carriers based on a carrier's size, rather than the areas and customers it serves, the Commission's rural support mechanism arbitrarily excludes purportedly "non-rural" carriers that, in fact, serve a majority of consumers living in rural and high cost areas. And, by limiting the universal service support available to "non-rural" carriers based on the mistaken premise that they are large enough to

⁵ Public Notice – Separate Statement of Chairman Bob Rowe, Footnote 1.

internally subsidize the cost of serving rural and high cost areas, the Commission's universal service support mechanisms provide little, if any, support to those carriers actually serving the lion's share of rural consumers, forcing them, instead, to rely on implicit subsidies that quickly are evaporating in today's competitive marketplace. This scheme not only is bad policy, it directly conflicts with the clear requirements of 254(e) of the Act, which require that support "be explicit and sufficient".

The time for equivocation has past. The Joint Board and Commission finally must confront the reality that the existing dichotomy between "rural" and "non-rural" carriers that is at the core of its existing high cost support mechanisms is unsustainable and fails to ensure that all carriers serving rural and high cost areas receive the "specific, predictable and sufficient" universal service support to which they are entitled under the Act. The Joint Board and Commission therefore should take this opportunity to redefine the term "rural" carrier to ensure that all carriers serving rural and high cost areas are entitled to federal (and state) universal service support on an equitable and non-discriminatory basis.

To be sure, the Act narrowly defines the term "rural telephone company" as smaller companies that meet certain criteria. But where Congress intended to distinguish between "rural telephone companies" and other telephone companies, it did so expressly.⁶ Section 254, by contrast, makes no such distinction and, indeed, makes no reference to "rural telephone company[ies]". Rather, it specifically requires the Commission and Joint Board to establish support mechanisms that are specific, predictable, and sufficient to preserve and advance universal service and ensure that all Americans (including those in rural *areas*) have access to telecommunications at rates that are affordable and comparable to urban rates. It further requires that any such support be provided on an equitable and nondiscriminatory basis. Denying support to those carriers that actually serve most rural areas and customers based solely on their size and

⁶ See, e.g., 47 U.S.C. 251(f) (exempting certain rural telephone companies from the requirements of section 251(c)).

ability to internally subsidize the cost of serving those areas and customers fails utterly to meet these requirements – particularly as those subsidies disappear in today’s competitive environment.

SBC recognizes that refining the term “rural” for purposes of determining eligibility for rural high cost support will have far-reaching consequences beyond the immediate concerns raised in the Public Notice. Nevertheless, only by eliminating the arbitrary distinction between “rural” and “non-rural” carriers based on size and instead focusing on rural areas will the Commission and Joint Board be able to establish a comprehensive framework that preserves and advances universal service in today’s competitive marketplace as required by the Act.

III. TO ENHANCE THE LONG-TERM STABILITY OF THE HIGH-COST FUND, THE JOINT BOARD AND THE COMMISSION SHOULD MODIFY THE BASIS ON WHICH CETCs RECEIVE HIGH-COST SUPPORT.

The Joint Board and Commission also should take other steps to ensure that federal universal service support mechanisms are competitively neutral and provide support only for essential services in a manner that does not favor particular service providers or technologies. In particular, either in this proceeding or in the ETC Designation/USF Portability proceeding, the Joint Board and Commission should modify the way in which support for CETCs is calculated to ensure that they receive no more support than necessary to ensure the availability of essential services to end users at an affordable rate. In particular, consistent with the language of section 254 and the goals of universal service, it should limit payments to CETCs to the lesser of the difference between the affordable rate for service and the CETC’s cost of providing service or the per-line support amount available to the ILEC.

Section 254(e) of the Act provides that a carrier that receives Federal universal service support “shall use that support *only* for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁷ However, under the Commission’s current

⁷ 47 U.S.C. § 254(e) (emphasis added). *See also* 47 C.F.R. § 54.7 (“A carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”).

universal service portability rules, a CETC is entitled to receive support for each line it serves in a particular study area based on the support the ILEC would have received for serving that line, irrespective of whether its costs are lower than the ILEC's.⁸ In addition, where a CETC uses UNEs to provide universal services, it is entitled to receive the lesser of either the full price of the UNE or the per-line support amount available to the ILEC.⁹ In either case, a CETC may receive more support than necessary to enable it to provide universal services at an affordable rate, and thus may use support for purposes other than the provision, maintenance or upgrading of services for which the support was intended. The Commission's universal service portability rules thus are flatly inconsistent with the requirements of section 254(e).

Likewise, they are inconsistent with the goals of universal service. Congress intended universal service support to be a safety net, providing support only where the cost of providing essential services would make those services unaffordable at market-based rates. Congress thus intended to provide universal service subsidies only to the extent necessary to permit an ETC to recover its costs while still charging an affordable rate for supported services.¹⁰ The universal service portability rules conflict with this goal by entitling CETCs to receive more support than necessary to provide universal services at an affordable rate. And, as a consequence, they unnecessarily increase the size of the fund and the cost of telecommunications services for other end users.

The Commission's portability rules also distort competition and encourage gaming by wireless CETCs. For example, the rules apparently have encouraged wireless CETCs or their customers to obtain billing addresses in rural areas where high cost support is available for wireless phones used predominantly in other areas. The South Dakota Telecommunications

⁸ 47 C.F.R. § 54.307(a)(1).

⁹ 47 C.F.R. § 54.307(a)(2).

¹⁰ In other words, universal service support should be limited to no more than the difference between an ETC's cost of providing essential services and the affordable rate.

Association has documented this phenomenon. In particular, it has shown that Western Wireless sought portable USF support for 30,108 “working loops” on the Pine Ridge Reservation in South Dakota in the first quarter of 2003 even though, according to 2000 census data, there were only 14,068 residents in 3,922 housing units on the reservation.¹¹ The rules thus have significantly and artificially increased the number of supported lines, further threatening the long-term viability of the universal service fund.

Where a CETC’s costs exceed those of the ILEC, there is no basis to provide the CETC more support than would be available to the ILEC. Providing CETC’s more high cost support than would be available to the ILEC would encourage inefficient entry, again distorting competition, providing more support than necessary to ensure that essential services are available to consumers at an affordable rate, and driving up the size of the fund. There is no justification or basis in the Act for requiring other carriers and end users to subsidize an inefficient second network by encouraging uneconomic entry by CETCs in high cost areas. The Commission therefore should limit high cost support payments to CETCs to the lesser of the difference between the affordable rate for service and the CETC’s cost of service or the per-line support available to the ILEC.

In calculating the CETC’s costs for purposes of comparing them to those of the incumbent, the Commission should rely on the existing forward-looking high cost model or require the CETC to submit detailed cost studies comparable to those required of the incumbent LECs serving rural areas. Because the Commission’s high cost model is intended to replicate the costs of efficient competitor, it is appropriate to rely on the output of that model to calculate the costs of a new entrant (which presumably would be using state of the art technology) unless that entrant can demonstrate that its costs are higher. Moreover, requiring CETCs to use the same methodology to calculate its costs as that required of an incumbent is consistent with the principle of competitive neutrality.

¹¹ Comments of South Dakota Telecommunications Association in WT Docket No. 02-381 (filed Feb. 3, 2003).

IV. CONCLUSION.

For the foregoing reasons, the Joint Board should recommend that the Commission modify its definition of “rural” carriers to include all carriers serving rural and high cost areas. In addition, the Commission should limit the universal service support available to CETCs to the lesser of their own costs or the costs of the incumbent carrier, as set forth above.

Respectfully submitted,

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